

B 104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET
(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER
(Court Use Only)

PLAINTIFF(S)

Kurt Franklin Fisher

DEFENDANT(S)

Supply Mart and
Sunland Fire Protection, Inc.

ATTORNEYS (Firm Name, Address, and Telephone No.)

Leonard & Moore, P.A.
274 Merrimon Avenue
Asheville NC 28801
828/255-0456

ATTORNEYS (If Known)

Andrew S. Lasine, Attorney for Sunland Fire Protection Inc
PO Box 2608
High Point NC 27261

PARTY (Check one box only)

☒ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor ☐ Other
☐ Trustee

PARTY (Check one box only)

☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☒ Creditor ☐ Other
☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

To avoid judgment lien.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) - Recovery of Money/Property

- ☐ 11 - Recovery of Money/Property - §542 turnover of property
☐ 12 - Recovery of Money/Property - §547 preference
☐ 13 - Recovery of Money/Property - §548 fraudulent transfer
☐ 14 - Recovery of Money/Property - other

FRBP 7001(2) - Validity, Priority or Extent of Lien

- ☒ 21 - Validity, priority of extent of lien or other interest in property

FRBP 7001(3) - Approval of Sale of Property

- ☐ 31 - Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) - Objection/Revocation of Discharge

- ☐ 41 - Objection/revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) - Revocation of Confirmation

- ☐ 51 - Revocation of confirmation

FRBP 7001(6) - Dischargeability

- ☐ 66 - Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62 - Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67 - Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(Continued next column)

FRBP 7001(6) - Dischargeability (continued)

- ☐ 61 - Dischargeability - §523(a)(5), domestic support
☐ 68 - Dischargeability - §523(a)(6), willful and malicious injury
☐ 63 - Dischargeability - §523(a)(8), student loan
☐ 64 - Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65 - Dischargeability - other

FRBP 7001(7) - Injunctive Relief

- ☐ 71 - Injunctive relief - imposition of stay
☐ 72 - Injunctive relief - other

FRBP 7001(8) Subordination of Claim or Interest

- ☐ 81 - Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment

- ☐ 91 - Declaratory judgment

FRBP 7001(10) Determination of Removed Action

- ☐ 01 - Determination of removed claim or cause

Other

- ☐ SS-SIPA Case - 15 U.S.C. §§78aaa *et seq.*

- ☐ 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

- ☐ Check if this case involves a substantive issue of state law
☐ Check if a jury trial is demanded in complaint

- ☐ Check if this is asserted to be a class action under FRCP 23
Demand \$

Other Relief Sought:

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| BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES | | | |
|--|-----------|---|--|
| NAME OF DEBTOR(S) Kurt Franklin Fisher | | BANKRUPTCY CASE NO. 10-20012 | |
| DISTRICT IN WHICH CASE IS PENDING WESTERN DISTRICT OF NC | | DIVISIONAL OFFICE BRYSON CITY | NAME OF JUDGE GEORGE R. HODGES |
| RELATED ADVERSARY PROCEEDING (IF ANY) | | | |
| PLAINTIFF | DEFENDANT | | ADVERSARY PROCEEDING NO. |
| DISTRICT IN WHICH ADVERSARY IS PENDING | | DIVISION OFFICE | NAME OF JUDGE |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ T. Bentley Leonard | | | |
| DATE February 10, 2010 | | PRINT NAME OF ATTORNEY (OR PLAINTIFF) T. Bentley Leonard | |

INSTRUCTIONS

The filing of a bankruptcy case created an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE/BRYSON CITY DIVISIONS**

| | | |
|--------------------------------|---|---|
| IN RE: |) | Case No.: 10-20012 |
| |) | Chapter 7 |
| Kurt Franklin Fisher |) | |
| |) | |
| Debtor(s). |) | |
| Kurt Franklin Fisher, |) | COMPLAINT TO AVOID LIEN PURSUANT TO 11 U.S.C. §506(d) and §522(f) and FRBP 4003(d) |
| |) | |
| Plaintiff(s), |) | |
| |) | |
| vs. |) | |
| |) | |
| Supply Mart and |) | |
| Sunland Fire Protection, Inc., |) | |
| |) | |
| Defendants. |) | |

NOW COMES the Debtor/Plaintiff, in the above-captioned proceeding pursuant to 11 U.S.C. §5006(d) and §522(f) and Rule 4003(d) of the Federal Rules of Bankruptcy Procedure, through counsel, who moves the Court to avoid the judgment liens of Supply Mart and Sunland Fire Protection, Inc., and says as follows:

1. The Plaintiff is an individual residing in Macon County, in the Western District of North Carolina.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §157(a),(b)(1) and (2) and subparagraph (I).
3. That the Debtor filed a Chapter 7 proceeding on January 19, 2010, listing Supply Mart and Sunland Fire Protection, Inc. as creditors in the Petition Schedules. Supply Mart obtained a judgment on May 27, 2009, in the amount of \$3,083.00, Case Number 09 CVM 125, Macon County NC, and Sunland Fire Protection, Inc. obtained a judgment on June 2, 2009, in the amount of \$4,000.00, Case Number 09 CVD.451, Guilford County, transcribed to Macon County, Case Number 09 T 21.
4. The Debtor owns real property at 76 Little Creek Trail, Scaly Mountain, Macon County, NC 28775, which is his residence. The property is valued at \$500,000.00 with a first mortgage lien held by Chase Home Finance of approximately \$417,000.00, and a second mortgage lien held by Bank of America of approximately \$200,000.00.
5. The Debtor is entitled to a residential exemption of \$35,000.00. There is no equity in the Debtor's real property for the judgment liens to attach and the judgments impair the Debtor's exemption.

6. Supply Mart and Sunland Fire Protection, Inc. are unsecured creditors in this case.

THEREFORE, the Plaintiff respectfully prays judgment of the Court as follows:

1. That the claims of Supply Mart and Sunland Fire Protection, Inc. be treated as unsecured during the pendency of the Chapter 7 proceeding and the debts and judgments be declared null and void when the Debtor receives a Discharge.

2. That upon the granting of a Discharge to the Debtor, Supply Mart and Sunland Fire Protection, Inc. be required to cancel the judgments of record or, in the alternative, that the Clerk of Superior Court for Macon County and the Clerk of Superior Court for Guilford County be allowed and authorized to cancel said judgments on the basis of the Order entered in this matter.

This the 10th day of February, 2010.

/s/ T. Bentley Leonard
T. Bentley Leonard, NC Bar #5717
Attorney for the Plaintiff
LEONARD & MOORE, PLLC
274 Merrimon Avenue
Asheville NC 28801
(828) 255-0456